

September 18, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Mark's Appliance & Heating

Date of Filing: August 16, 2007

Case No.: TEE-0048

On August 16, 2007, Mark's Appliance & Heating filed an Application for Exception with the Office of Hearings and Appeals ("OHA") of the Department of Energy ("DOE"). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration ("EIA") Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to

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<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. *Exception Criteria*

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a

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<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990), *see also Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (1997) (stating, “We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief”).

<sup>8</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

### *III. Mark's Appliance & Heating's Application for Exception*

Mark's Appliance & Heating filed its Application for Exception on August 16, 2007.<sup>13</sup> After reviewing the Application, we determined that we had insufficient information to evaluate the request. We contacted Mark's Appliance & Heating in order to gather more information.<sup>14</sup>

Mark's Appliance & Heating, based in Warren, Maine, is a heating oil and liquid propane vendor. The firm is currently participating in its first sample, which began in August, 2004.<sup>15</sup> Mark's Appliance & Heating states that completing the monthly reporting form has become burdensome. The firm states that the "report is a major inconvenience for our small family owned business."<sup>16</sup> The company consists of three employees<sup>17</sup> and bills customers "by hand."<sup>18</sup> In turn, the firm must manually cull reporting information from at least three sources, which is "very time consuming."<sup>19</sup> Without a computer system's aid, this process requires between four hours in the summer to a day and a half during the winter.<sup>20</sup> For these reasons, Mark's Appliance & Heating requests permanent relief from its obligation to file Form EIA-782B.

### *IV. Analysis*

Mark's Appliance & Heating's arguments – that the firm consists of three employees, lacks a computer data system, and spends between four hours and a day and a half culling information from several sources – do not indicate that the firm is experiencing a burden significantly greater than the burden other reporting firms experience. Indeed, we have routinely denied exception applications in precisely these circumstances.<sup>21</sup>

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<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> Letter from Mark's Appliance & Heating to OHA, received August 16, 2007.

<sup>14</sup> See Memoranda of Telephone Conversations between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007 and August 28, 2007.

<sup>15</sup> Memorandum of Telephone Conversation between Tammy Hepner, Project Manager, Petroleum Division, EIA, and David M. Petrush, OHA, dated August 23, 2007 and Memorandum of Telephone Conversation between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007.

<sup>16</sup> Letter from Mark's Appliance & Heating to OHA, received August 16, 2007 (emphasis in original).

<sup>17</sup> Memorandum of Telephone Conversation between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007.

<sup>18</sup> Letter from Mark's Appliance & Heating to OHA, received August 16, 2007.

<sup>19</sup> *Id.* (emphasis in original).

<sup>20</sup> Memorandum of Telephone Conversation between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007.

<sup>21</sup> See *The Kiesel Co.*, 29 DOE ¶ 81,019 (2006) (denying a firm relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business); see also *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (2005) (denying relief where reporting took between two and three days, the firm lacked a computer system to compile data, and could not afford extra help to complete the process), *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (1997) (denying relief where the firm had only a two-person staff and did not maintain the reporting information as a monthly record), *Jefferson Landmark, Inc.*, 29 DOE ¶ 81,005 (2005) (denying a small, busy firm relief where they "prepare[d] the form using a pen and calculator").

The fact that Mark's Appliance & Heating is a small firm with only a limited staff is not grounds for relief.<sup>22</sup> Additionally, the Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and a half hours per month to complete the form.<sup>23</sup> Furthermore, Mark's Appliance & Heating may reduce its reporting burden by employing reasonable estimates.<sup>24</sup>

For the above-stated reasons, Mark's Appliance & Heating has not demonstrated that it meets the standards for exception relief.

It is Therefore Ordered That:

- (1) Mark's Appliance & Heating's Application for Exception, Case No. TEE-0048, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Acting Director  
Office of Hearings and Appeals

Date: September 18, 2007

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<sup>22</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>23</sup> Section 10 of the General Instructions to Form EIA-782B.

<sup>24</sup> See Section 7 of the General Instructions to Form EIA-782B.